

MT LEGISLATIVE HISTORY

Year CD 381, 1999

Bill # SB 215 Original bill & hist. ✓ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) _____ C
 _____ C
1/28 ✓ C
 _____ C

Hearing Date(s) _____ C
 _____ C
3/11 ✓ C
 _____ C

Date Out 1/29 ✓ C

Date Out 3/18 ✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____

Minutes

Report

3/23 Transmitted to Governor
 3/26 Signed by Governor
 3/30 Chapter Number Assigned
 Chapter Number 197
 Effective Date: 10/01/1999 - All Sections

SB 215 Introduced by Bartlett

LC0628 Drafter: MacMaster

Increase the Negligent Homicide Incarceration Penalty;...

1/16	Introduced and 1st Reading		
1/16	Referred to Judiciary		
1/16	Fiscal Note Requested		
1/21	Fiscal Note Received		
1/22	Fiscal Note Signed		
1/22	Fiscal Note Printed		
1/28	Hearing		
2/01	Committee Executive Action--Bill Passed	9	0
2/01	Committee Report--Bill Passed		
2/05	2nd Reading Passed	32	17
2/06	3rd Reading Passed	34	14
	Transmitted to House		
2/16	Referred to Judiciary		
3/11	Hearing		
3/18	Committee Executive Action--Bill Concurred	10	7
3/18	Committee Report--Bill Concurred		
3/31	2nd Reading Concurred	82	18
4/01	3rd Reading Concurred	85	15
	Returned to Senate		
4/07	Sent to Enrolling		
4/08	Returned from Enrolling		
4/10	Signed by President		
4/12	Signed by Speaker		
4/12	Transmitted to Governor		
4/20	Signed by Governor		
4/22	Chapter Number Assigned		
	Chapter Number 381		
	Effective Date: 10/01/1999 - All Sections		

SB 216 Introduced by Swysgood, et al.

LC0442 Drafter: K. Williams

Ratify a Reserved Water Rights Compact Between the United States Fish and Wildlife Service and the State of Montana for Federally Reserved Waters Associated with the Red Rock Lakes National Wildlife Refuge and Wilderness Area

1/16	Introduced and 1st Reading		
1/16	Referred to Natural Resources		
2/03	Hearing		
2/04	Committee Executive Action--Bill Passed	11	0
2/04	Committee Report--Bill Passed		
2/06	2nd Reading Passed as Amended	48	0
2/08	3rd Reading Passed	47	1
	Transmitted to House		
2/16	Referred to Natural Resources		

INTRODUCED BY Sen. Baertlein Sen. Baertlein BILL NO. 215
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE NEGLIGENT HOMICIDE INCARCERATION PENALTY; AND AMENDING SECTION 45-5-104, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-104, MCA, is amended to read:

"45-5-104. Negligent homicide. (1) A person commits the offense of negligent homicide if he the person negligently causes the death of another human being.

(2) . Negligent homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).

(3) A person convicted of negligent homicide shall be imprisoned in the state prison for any term not to exceed ~~10~~ 20 years or be fined an amount not to exceed \$50,000, or both."

- END -

FISCAL NOTE

Bill #: SB0215

Title: Increase maximum negligent homicide penalty

Primary

Sponsor: Sue Bartlett

Status: As introduced

Sue Bartlett

1/22/99

Sponsor signature

Date

Dave Lewis

1-21-99

Dave Lewis, Budget Director

Date

Fiscal Summary

	<u>FY2000</u> <u>Difference</u>	<u>FY2001</u> <u>Difference</u>
Expenditures:	\$0	\$0
Revenue:	\$0	\$0
Net Impact on General Fund Balance:	\$0	\$0

Yes No

X

Significant Local Gov. Impact

Yes No

X

Technical Concerns

X Included in the Executive Budget

X

Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. This bill would increase the maximum sentence for negligent homicide from 10 to 20 years. Given that the current maximum sentence for negligent homicide for offenders is 10 years, the Department of Corrections (DOC) assumes that it will not experience the financial impact of this increased maximum sentence until future biennia.
2. The current average net sentence granted between 1994-1998 for negligent homicide is 8.6 years. The DOC cannot project if the judicial system will materially change its sentencing patterns with the change in this law.

SB 215

3. A DOC review of offender files for individuals sentenced in FY 1996 through FY 1998 revealed that approximately 16% of those who were charged with negligent homicide received the maximum sentence of 10 years with no time suspended or deferred. During this same time frame, 35% received the maximum sentence with some of the sentence suspended.
4. Given assumptions one through three, the DOC assumes that it will not experience impact from this bill in the 2001 biennium.
5. There is no fiscal impact to the Department of Justice.
6. There is no fiscal impact to the state-funded Judiciary.

LONG-RANGE IMPACTS:

By increasing the maximum sentence for negligent homicide, this bill may impact the DOC in the FY 2010 and beyond. This bill may increase correctional facility populations in these years. This impact is not financially measurable because there are no cost per day estimates this far into the future. Assuming that the number of offenders sentenced to maximum sentences remains constant, (8 were sentenced from FY 1996 through FY 1998) it can expect the following cumulative impact in population:

<u>Fiscal Year</u>	<u>Increase in Offenders</u>
2010	3
2011	6
2012	9
2013	12
2014	15
2015	18
2016	21
2017	24
2018	27
2019	30
2020	30

This bill may also increase Probation and Parole caseloads; offenders may receive the maximum sentence with more time suspended, which increases the overall time under supervision.

SEN. GRIMES asked Mr. Ochner to address false or weak allegations. Mr. Ochner explained that his job is to be the objective fact finder. The first thing he reviews is the motivation for the person making the complaint. He needs to be convinced of the facts before he can even attempt to convince a prosecutor who needs to convince 12 people of the facts. If he is not convinced and there is no corroborating evidence, in most cases he will not even take the case to a prosecutor.

SEN. GRIMES remarked that every community is affected by these type of circumstances. It is very sad that this type of legislation is necessary, but it is also very important legislation.

HEARING ON SB 215

Sponsor: SEN. SUE BARTLETT, SD 27, Helena and Unionville

Proponents: Mike McGrath, Lewis and Clark County Attorney
Rich Ochner, Missoula City Police Detective
Kirsten LaCroix, Missoula County Attorney's Office
John Connor, Attorney General's Office
Dennis Paxinos, Yellowstone County Attorney

Opponents: None

Opening Statement by Sponsor:

SEN. SUE BARTLETT, SD 27, Helena and Unionville, introduced SB 215. The only substantive change is on line 15 which makes the maximum penalty for negligent homicide 20 years instead of 10 years. She believes that the sentence range for crime should reflect the severity of the crime and be comparable to the severity of other crimes that have the same kind of sentence range. A ten year penalty for someone convicted of negligent homicide does not meet that test. Negligent homicide is a crime that has the broadest set of fact circumstances under the law that could occur for someone to end up charged with this crime.

There are people who have been convicted of negligent homicide who have received suspended sentences. The facts of their particular case were sufficient to convince the judge that a suspended sentence was an appropriate punishment. There have been other circumstances where the judge did not feel that 10 years was an adequate penalty but that was the highest penalty available.

There was a case in Great Falls where an individual was convicted of aggravated assault. The crime included an individual shaking

a child and causing permanent impairment to the child. The individual was convicted of aggravated assault and received a 15 year sentence. Recently an individual was convicted of negligent homicide for the death of his infant daughter from shaken baby syndrome. Sentence has not been passed in that case but the maximum he could receive would be 10 years.

{Tape : 1; Side : B; Approx. Time Counter : 10.03}

Proponents' Testimony:

Mike McGrath, County Attorney, explained that the state does not have a child homicide statute. They are finding a larger number of cases in this area in recent years. One of the reasons is the sophistication of medical technology available for arriving at the cause of these types of injuries. There have been cases where a care giver for an infant shakes the child so violently that it creates a number of tears in the brain and the child dies or is severely injured. The person who shakes a baby enough to cause a death needs to use an incredible force. The person is not shaking the child to cause its death. The person is shaking the child out of some inappropriate response to the child. Attempted or deliberate homicide doesn't fit the crime. Negligent homicide is usually charged. The definition of negligent homicide is a wanton and willful disregard of a particular result. There are some cases where documentation shows prior hematomas. In these case a 10 years sentence, where the person may only serve five years, is not an adequate sentence.

Another situation involved a man who now has 12 DUIs. When he had 7 DUIs, he was given a year in the county jail. He did not have any treatment while in jail. In less than 40 hours after he was released from jail, he was the driver of a vehicle that was involved in an accident and a 15-year-old girl was killed. This is a classic negligent homicide case in Montana. He had many opportunities to address his drinking and knew it was a dangerous situation to drive while intoxicated, but did it anyway. In this case, he was sentenced for 10 years and served his time. Since his release he has had three or four DUIs. On the last DUI he was charged with criminal endangerment and sent back to prison.

Mr. McGrath further commented that in the fiscal note, EXHIBIT(1), item #2 indicates that the average net sentence between 1994 and 1998 for negligent homicide is 8.6 years. He didn't believe this addressed actual incarcerations but that it also included suspended sentences.

Dennis Paxinos, Yellowstone County Attorney, rose in support of SB 215. In Montana, a third offense for indecent exposure

carries 100 years in the Montana State Prison. If you shoot someone and are charged with aggravated assault, the sentence is up to 20 years. Assaulting a peace officer or a judicial officer carries a twenty year sentence. If you are convicted of a aggravated assault on a child, the sentence is 20 years. If you kill the child, but you didn't mean to do it, the sentence is up to 10 years.

A very difficult job for a prosecutor is explaining Montana's sentencing statutes to a victim. An individual who receives a 10 year sentence will be automatically eligible for parole in two and a half years. If they served time in jail awaiting the trial, credit will be given for that time. Trial judges routinely will offer "lesser included" from deliberate, to mitigated deliberate, to negligent homicide. Those offenses are being offered to juries. The difference of penalties between a deliberate homicide, which is 100 years in prison; mitigated deliberate homicide, which is 40 years; and negligent homicide, which is 10 years, is too broad a spectrum.

Kirsten LaCroix, Missoula County Attorney, reported that two years ago a 12 year old and a 8 year old were walking along Rattlesnake Drive in Missoula with their mother. Meanwhile, Robert Davis, who was on probation for drinking and driving and had been ordered not to drink, drive, or refuse a blood test, drove off the road while intoxicated and ripped mom right out of her children's hands and they both watched her die. The defendant sobered up and decided to cooperate the next day. Had Mr. Davis broke into their home and taken a television set, he would be facing 30 years - 10 for the theft and 20 for the burglary. If he had taken their parent's checkbook and forged their names for a \$25 amount of groceries, he would have been facing 20 years for forgery. If he had failed to return rental property that he had borrowed, he would be looking at 10 years in prison. He took the life of the children's mother and his maximum penalty is up to 10 years.

The maximum penalties affect the prosecutors job at every stage of the process. It weighs heavily into negotiating. With a 10 year maximum, the most that will be served is two and a half years in prison with some of that chipped away due to jail time. This limits the defendant's risk and makes them more willing to want to go to trial. In the case mentioned above, it also affected the restitution. The family of the victim was homeless. The funeral expenses were monumental to them. Even though the individual received a ten year sentence, they do not have a cushion of time that they can put a suspended sentence on him afterwards in order to enforce that he pay back the family's restitution of medical bills and funeral expenses. We can never

bring the loved one back, but we can give the victim's family a small slice of justice.

Rich Ochner, Missoula City Police Detective, reported that in 1984 a man came to Missoula and told his friends that he was going to steal a car and, if stopped by the police, was going to kill the police officer. He proceeded to steal a car and some gas and was pulled over by Deputy Al Kimery?. The man rolled down his window, stuck his gun out the window, shot, and killed Deputy Al Kimery. This offense went to trial on the charge of deliberate homicide and, in the alternative, negligent homicide. The jury hung on deliberate homicide and almost convicted on negligent homicide. This case was retried and the man was later convicted of deliberate homicide. Deputy Al Kimery left a wife and two children. They were told that, if convicted, the worst the offender would serve was 10 years in prison. At the time, a persistent or dangerous offender would only serve five years. Sometimes justice needs to come in the way of sentencing. When negligent homicide is charged, they need to prove gross negligence, which is very difficult to accomplish.

John Connor, Attorney General's Office, explained that the **Montana County Attorney's Association** had brought this bill to **SEN. BARTLETT** envisioning a concept that would allow for a shaken baby situation to include a negligent homicide that resulted in the death of a child. **SEN. BARTLETT** suggested changing one word which involved changing "10" years to "20" years. This accomplished their intent.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. JABS questioned the different homicide charges in current law. **Mr. McGrath** clarified that there are three homicide charges in Montana which include deliberate, mitigated deliberate, and negligent. The maximum for mitigated deliberate homicide is forty years and the maximum for deliberate homicide is 100 years or, in some cases, the death penalty would apply.

SEN. JABS further questioned whether negligent homicide was charged as a lesser offense when mitigated homicide could not be proven even though the prosecutor may believe that it was mitigated homicide. **Mr. McGrath** explained that mitigated homicide is homicide that is committed under substantial duress. The old classic example of mitigated homicide would be a spouse coming home and finding the other spouse having sex with another person and killed one or both of the parties. It isn't very often that a charge is lessened from mitigated deliberate homicide to negligent homicide. With the shaken baby example,

the offender may have been under duress but he still wasn't trying to kill the baby and simply acted grossly negligent.

SEN. GRIMES remarked that he found the inconsistencies in the law very frustrating. He asked for a list of the different penalties and fines in the criminal code. **Mr. Connor** responded that it would take a little time to pull a list together. There is no consistent thread when individual statutes are amended. He offered to work on such a list.

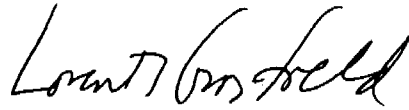
Closing by Sponsor:

SEN. BARTLETT explained that she had material that could either substitute for the information **Mr. Connor** was asked to prepare or be the starting point for it. Serving on the Sentencing Commission provoked her interest and understanding of sentencing structure in Montana. A list of different crimes was developed by maximum and minimum penalties. This would not include fines. It is inadequate because the sentencing statutes have become very convoluted. For example, negligent arson carries a 10 year maximum while arson carries a 20 year maximum. She does not know enough about the individual crimes to be able to understand the differences. She suggested that **Mr. Connor** provide a brief summary that would help the Committee understand each of the individual crimes.

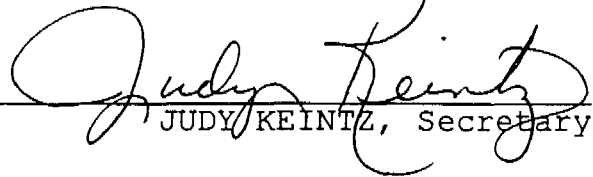
Montana has an indeterminate sentencing system which provides a range of years available to a prosecutor and a judge to determine, on a specific case basis, an appropriate sentence. The prosecutor and defense attorneys come in with their recommendations, but the judge makes the final decision. Because the facts in different negligent homicide cases can vary so dramatically, it seems to be most appropriate to give judges a decent sentence range to work under. In the case of negligent homicide, she believes that 0 to 10 years is adequate and that 0 to 20 years would be more appropriate.

ADJOURNMENT

Adjournment: 10:37 A.M.



SEN. LORENTS GROSFIELD, Chairman



JUDY KEINTZ, Secretary

LG/JK

they have their specialized equipment there. Amendment no. 5 of SB003601.avl states "rendered to a patient of a clinic or a patient referred by a clinic". These means that for dentists to be covered by the immunity, the patient will need to be a patient of the clinic or referred by a clinic.

SEN. HOLDEN stated that they definitely made a mistake in that area and an amendment was necessary to clarify the language.

SEN. GRIMES maintained that the discussion in the Public Health Committee was that there would be some impact on the dental profession and this would need to be addressed at a later time in the legislative process. If doctors were to be held to a certain standard, dentists would be held to the same standard.

Vote: The motion carried with **SEN. BARTLETT** voting "no" - 8-1.

{Tape : 2; Side : A; Approx. Time Counter : 10.50}

EXECUTIVE ACTION ON SB 215

Motion: **SEN. BARTLETT** moved that SB 215 DO PASS.

SEN. BARTLETT explained that SB 215 takes the maximum penalty that could be given for a negligent homicide from 10 years to 20 years. The reasons are that a 20 year maximum penalty conforms better with the maximum penalty for other crimes of an equally serious nature. The kinds of cases that are charged as negligent homicide have a very broad range of circumstances and the 10 year maximum sentence is not an adequate sentence range to give a judge the opportunity to address the severity of a particular instance.

Vote: The motion carried unanimously - 9-0.

EXECUTIVE ACTION ON SB 203

Motion: **SEN. BARTLETT** moved that SB 203 DO PASS.

SEN. BARTLETT explained that this addresses the Supreme Court decision regarding writs of execution to collect on judgments. The Court held that the post judgment execution laws were unconstitutional. The elements of that decision are addressed in SB 203.

SEN. GRIMES remarked that on page 3, following the language "when the sheriff or levying officer", there was a suggestion that the language "acting as an agent of the court" should be inserted.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on March 11, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: Rep. Aubyn A. Curtiss (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 215, SB 503, SB 163, SB 326, 3/4/1999

Executive Action: None

HEARING ON SB 215

Sponsor:

Senator Bartlett presented SB 215.

{Tape : 1; Side : A; Approx. Time Counter : 31 - 73}

Proponents:

Mike McGrath, Montana County Attorneys Association

{Tape : 1; Side : A; Approx. Time Counter : 73 - 126}

Dennis Paxinos, Yellowstone County Attorney

{Tape : 1; Side : A; Approx. Time Counter : 126 - 155}

Marty Lambert, Gallatin County Attorney

{Tape : 1; Side : A; Approx. Time Counter : 155 - 169}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 169 - 414}

Closing by Sponsor:

Senator Bartlett made closing statements.

{Tape : 1; Side : A; Approx. Time Counter : 414 - 550}

{Tape : 1; Side : B; Approx. Time Counter : 0 - 12}

HEARING ON SB 503

Sponsor:

Senator Ellingsen presented SB 503.

{Tape : 1; Side : B; Approx. Time Counter : 12 - 56}

Proponents:

Mike Donahoe, Attorney

{Tape : 1; Side : B; Approx. Time Counter : 56 - 104}

John Sheehy, self-Attorney

Senator Grimes requested SB 506 & SB 507 be tabled immediately.

EXECUTIVE ACTION ON SB 506 & SB 507

Motion/Vote: REP. SHOCKLEY moved SB 506 & SB 507. Motion carried 16-1. Rep. Molnar voted no.
(Rep. Gallus, Gutsche and Soft absent)
{Tape : 2; Side : A; Approx. Time Counter : 0 - 63}

EXECUTIVE ACTION ON SB 158

Motion: REP. AHNER moved that SB 158 BE CONCURRED IN.
Motion/Vote: REP. WILLIAMS moved that SB 158 BE TABLED. Motion carried 14-2 with Molnar and Noennig voting no.
(Rep. Gallus, Gutsche, Soft and Curtiss absent)
{Tape : 2; Side : A; Approx. Time Counter : 63 - 112}

EXECUTIVE ACTION ON SB 221

Motion/Vote: REP. AHNER moved that SB 221 BE CONCURRED IN. Motion carried 15-2 with Curtiss and Jore voting no.
(Rep. Gallus, Gutsche and Soft absent)
{Tape : 2; Side : A; Approx. Time Counter : 112 - 158}

EXECUTIVE ACTION ON SB 190

Motion/Vote: REP. AHNER moved that SB 190 BE CONCURRED IN. Motion carried 17-0.
(Rep. Gallus, Gutsche and Soft absent)
{Tape : 2; Side : A; Approx. Time Counter : 158 - 242}

EXECUTIVE ACTION ON SB 215

Motion/Vote: REP. AHNER moved that SB 215 BE CONCURRED IN. Motion carried 10-7 with Ahner, Hurdle, Jore, Kitzenberg, McGee, Molnar, and Shockley voting no.
(Rep. Gallus, Gutsche and Soft absent)
{Tape : 2; Side : A; Approx. Time Counter : 242 - 550}
{Tape : 2; Side : B; Approx. Time Counter : 0 - 140}

EXECUTIVE ACTION ON SB 16